

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
AT&T Petition to Launch a Proceeding)	GN Docket No.12-353
Concerning the TDM-to-IP Transition)	
)	
)	
Petitions for Rulemaking and Clarification)	
Regarding the Commission’s Rules)	
Applicable to the Retirement of Copper Loop)	RM-11358
and Copper Subloops)	
)	

COMMENTS OF CALTEL

Pursuant to the Commission’s Public Notice (DA 13-147) establishing dates for comments and reply comments on the request by Mpower Communications Corp., U.S. TelePacific Corp., ACN Communications Services, Inc., Level 3 Communications, LLC, TDS Metrocom, LLC, and Telecommunications for the Deaf and Hard of Hearing, Inc. (collectively “TelePacific et al”) that the Commission “refresh the record” and change its copper retirement rules, the California Association of Competitive Telecommunications Companies¹ (“CALTEL”) submits the following comments.²

¹ CALTEL is a non-profit trade association working to advance the interests of fair and open competition and customer-focused service in California telecommunications. CALTEL members are entrepreneurial companies building and deploying next-generation networks to provide competitive voice, broadband, and video services. The majority of CALTEL members are small businesses who help to fuel the California economy through technological innovation, new services, affordable prices and customer choice.

² See www.caltel.org for a list of CALTEL member companies.

I. Introduction and Summary

On January 25, 2013, TelePacific et al requested that the Commission refresh the record in RM-11358³ and revisit its copper retirement rules, as promised in the National Broadband Plan.⁴ Accompanying the request was data from nine CLECs to quantify the deployment of Ethernet over Copper (EoC) services throughout California.

CALTEL supports that request. First, since the Commission adopted the copper retirement rules in 2003, new technologies allow CLECs to “turbo-charge” multiple dry copper loops to provide reasonably-priced, high-speed broadband at speeds that only a few years ago were available only on fiber. Secondly, ILEC practices of aggressively migrating wireline voice customers onto fiber have increased since CALTEL brought these issues to the Commission’s attention in its comments on the USTelecom Forbearance Petition,⁵ and creates an urgent need to revisit the rules before ILECs force-migrate remaining customers and file notices to retire copper facilities that serve entire neighborhoods.

³ *Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers, BridgeCom International et al. Petition for Rulemaking and Clarification* (filed January 18, 2007) and *Petition of XO Communications, LLC., Covad Communications Group, Inc., NuVox Communications and Eschelon Telecom, Inc. for a Rulemaking to Amend Certain Part 51 Rules Applicable to Incumbent LEC Retirement of Copper Loops and Copper Subloops* (filed January 18, 2007).

⁴ See Federal Communications Commission, *Connecting America: The National Broadband Plan*, Chapter 4, pp. 50-51; <http://download.broadband.gov/plan/nationalbroadband-plan.pdf> (“National Broadband Plan”), Recommendations 4.7 and 4.9. See also *Wireline Competition Bureau Seeks Comment on Business Broadband Marketplace*, WC Docket No. 10-188, DA 10-1743, dated September 15, 2010.

⁵ Comments of CALTEL, *In the Matter of Petition of USTelecom For Forbearance Under 47 U.S.C. § 160(c) From Enforcement Of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61, dated April 9, 2012.

II. Discussion

A. **Since the Commission Adopted the Current Copper Retirement Rules, New Technologies Have the Ability to “Turbo-Charge” Multiple Copper Loops to Provide Fiber-Like Broadband Speeds to Small and Medium Business Customers**

First, as CALTEL explained in its response to AT&T’s TDM-to-IP Transition Petition (AT&T Petition),⁶ issues dealing with the inevitable transition to IP-based networks and services have been conflated by AT&T and Verizon. Their calls to deregulate the physical layer of their networks reflect only their business plans, rather than sound public policy. That is because the protocol used to route and exchange traffic with other service providers bears no relationship to the outside plant facilities used to connect service provider switches to end user premises. Nor does it necessarily have a bearing on what kind of services can be supported. IP traffic is routinely routed over copper. Because it is expensive to replace copper outside plant with fiber, and broadband at speeds from 3-100 Mbps can be provided over copper, the copper in the ILECs’ networks will remain an important part of their physical networks for the foreseeable future.

In fact, as noted, TelePacific et al accompanied its request with data that showed that business customers in California are enjoying reasonably-priced, copper-based services that provide broadband speeds that only a few years ago were available only over fiber. The data from nine CALTEL member companies quantifies the deployment

⁶ Reply Comments of CALTEL, *In the Matter of AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition and Petition of the National Telecommunications Cooperative Association for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution*, GN Docket No. 12-353, dated February 25, 2013.

of Ethernet over Copper (EoC) services throughout California. This data shows that these CLECs provide EoC services from 343 central offices, allowing them to reach approximately two-thirds of the 371,887 SMB customers in the state. Of those customers, 300,000 are within 12,000 feet of their serving central office, which is a reasonable range from six to 20 or more Mbps of EoC. In 60% of the 343 central offices, two or more of the participating CLECs offered EoC services, providing these customers with at least three fixed broadband competitive options. Overall, the nine CLECs have deployed EoC at 731 premises in California.⁷ TelePacific et al also explained that the average retail price for Business EoC is \$550 for 10 Mbps, compared with \$350 for a T1 circuit (1.5 Mbps) or \$3,000 for a DS3 (45 Mbps), and that twice as many copper Ethernet ports are deployed over fiber.⁸

The data submitted by TelePacific et al confirms the determinations the Commission made in its market-based analysis of Qwest's UNE Forbearance Petition in the Phoenix MSA:⁹

First, there is evidence that consumers can benefit from innovative offerings provided by competitors relying on UNEs. Several providers have explained that by attaching their own equipment to legacy copper loops leased as UNEs, they have been able to differentiate their service offerings and provide additional choices to residential or business customers in markets entered by relying on UNEs.¹⁰

⁷ Letter of US Telepacific Corp. et al, Requesting Commission to Refresh Record and Take Expedited Action to Update Copper Retirement Rules, WC Docket Nos. 10-188, 12-353; GN Docket Nos. 09-51, 13-5; FM-11358, filed January 25, 2013 (TelePacific et al Request).

⁸ Id.

⁹ Memorandum Opinion and Order, *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160 (c) in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket No. 09-135, FCC 10-113, (2010) (Qwest UNE Forbearance Order).

¹⁰ Id. ¶ 102.

Second, evidence in the record also suggests that competitors rely on UNEs to target particular niche markets or customer segments. For example, multiple carriers provide advanced services over copper loops to enterprise customers, including hospitals, fire departments, and schools, as well as government clients.¹¹

Finally, although Qwest's petition does not primarily involve advanced services, the data driven evaluation of the state of competition in legacy services intrinsic to the Commission's traditional market power framework also may support broadband deployment and competition. As the National Broadband Plan explains, "the nation's regulatory policies for wholesale access affect the competitiveness of markets for retail broadband services provided to small businesses, mobile customers and enterprise customers."¹²

The rapid fulfillment of these market innovations, expanded broadband deployment, and resulting customer benefits over the past three years reinforce the Commission's conclusion that last-mile copper loops are essential to maintaining competitive choice for business customers:

We find that de novo entry is equally unlikely. As discussed above, in the Triennial Review Order, the Commission found that competitive carriers face extensive economic barriers to the construction of last-mile facilities. Congress enacted and the Commission implemented the UNE framework in an attempt to lower barriers to entry and to create a viable platform for entry into the local market. ***We see nothing in the record to indicate that the passage of time has lowered these barriers for competitive LECs that do not already have an extensive local network used to provide other services to enterprise locations today.***¹³

CALTEL urges the Commission to act upon new data and revisit its copper retirement rules. CALTEL also plans to work with the California Public Utilities Commission (CPUC) on last-mile issues in recognition of its critical role in protecting consumers, ensuring the safety and reliability of telecommunications networks, and

¹¹ Id. ¶ 103

¹² Id. ¶ 40.

¹³ Id. ¶ 90.

promoting competition. To that end, CALTEL is an active participant in the CPUC's Service Quality proceeding, which is developing a Request for Proposals (RFP) to perform a "physical inspection of (AT&T and Verizon's) network facilities throughout the state and a review of carrier policies, procedures, and documents," in order to "maintain acceptable levels of service quality" for retail and wholesale customers.¹⁴

B. ILECs are Aggressively Migrating POTS Customers to Fiber Facilities Which, Based on Evidence Gathered in a Proceeding Before the California Public Utilities Commission, Will Lead to Retirement Notices for Entire Neighborhoods

A number of ILECs, including Verizon, are aggressively migrating wireline voice customer onto fiber facilities in neighborhoods where Fiber-To-The-Home (FTTH) has been deployed. Although Verizon announced this as a way to address chronic loop maintenance issues, it appears that all non-FiOS customers are being targeted to increase the fill rates and improve the economics on otherwise underused facilities.¹⁵ CALTEL has learned that other California ILECs are forcing customers onto fiber facilities without their knowledge or authorization, and expects to be able to provide additional information in its reply comments.

As CALTEL described in its comments on USTelecom's Forbearance Petition, in 2007 CALTEL filed a Petition for Rulemaking with the CPUC to advocate for state specific copper retirement rules. CALTEL's petition was granted and a rulemaking was opened in January, 2008. Although CALTEL did not persuade the CPUC to adopt all of

¹⁴ Decision Affirming Provisions of the Scoping Memo and Ruling, D.13-02-023, *Order Instituting Rulemaking to Evaluate Telecommunications Corporations Service Quality Performance and Consider Modification to Service Quality Rules, R.11-12-001*, signed 2/28/13, Attachment A, p. 12.

¹⁵ See <http://www.fiercetelecom.com/story/verizons-shammo-well-convert-300000-homes-fiber-2013/2013-03-04>

its proposals at that time, the ability to gather extensive information through discovery was valuable and is relevant here.

In particular, CALTEL's witness in the CPUC proceeding was able to confirm that "Verizon's internal analysis fundamentally conclude(d) that shutting down its copper network would eventually require a massive and costly forced-migration of customers because its FiOS entertainment network will not voluntarily attract the majority of its base."¹⁶ He also summarized the economics of a plan disclosed during discovery by Verizon to implement a "forced migration" of customers to its FiOS fiber loops, and concluded that "as a practical matter, Verizon will never reach the day that *every* customer that it passes will subscribe to FiOS, or every premise that does subscribe to FiOS will *always* be occupied by a new owner/tenant with the same needs and demands. As a result, the question as to whether copper loops should be retired is inexorably tied to the question of what should be done with the customers still served by that copper."¹⁷

Back in 2008, when Verizon was deploying FiOS, CALTEL learned that "Verizon ha(d) evaluated whether to implement a forced-migration of customers to its FiOS network on at least three occasions. Although the specific details of these analyses are confidential, these broad conclusions are drawn from a review of these analyses:

* Based on Verizon's internal expectations, most customers will not voluntarily subscribe to FiOS-based services;

¹⁶ See Declaration of Joseph Gillan, On Behalf of CALTEL, California Public Utilities Commission Rulemaking R.08-01-005, *Rulemaking Regarding Whether to Adopt, Amend, or Repeal Regulations Governing the Retirement by Incumbent Local Exchange Carriers of Copper Loops and Related Facilities Used to Provide Telecommunications Services*, at ¶8. CALTEL included the entire declaration as Attachment 1 to its comments on the USTelecom Forbearance Petition.

¹⁷ Id. ¶ 16.

- * Even after the migration of customers to FiOS through customer choice, churn, and facility swaps to address persistent network troubles, copper will still serve most of its customers;
- * Encouraging additional migrations through voluntary incentives would only be partially successful;
- * A forced-migration strategy would be needed to shut down the copper network;
- * Operational savings did not justify diverting capital to implement a forced-migration of traditional customers to FiOS;
- * With each successive analysis, it appeared that the estimated operational cost savings from a copper shutdown declined.
- * Copper had not outlived its usefulness and value.”¹⁸

At the time, the “most interesting observation from the Verizon Analyses was that the necessary linkage between forced-migration and copper-retirement – that is, that customers must be evicted from the copper network before it can be shut down – had the potential to adversely affect fiber deployment. This is because the costs of a forced migration strategy *competed* within Verizon with FiOS deployment for capital and, as such, expending resources to migrate customers off copper could have actually discouraged additional broadband deployment elsewhere.”¹⁹ Consequently, Verizon had, up until November of 2011, declined to pursue a path of POTS migrations.

However, by then the economic incentives of ILEC fiber deployment had changed. After nine years, FiOS video penetration was approximately 32% throughout Verizon’s nationwide footprint, and Verizon’s focus has shifted to increasing the fill rate on FiOS loops and reducing per unit costs.²⁰ The competing economic incentives that were a barrier to implementing a Forced Migration strategy apparently no longer existed.

¹⁸Id. ¶ 17.

¹⁹Id. ¶ 18.

²⁰Comments of CALTEL, *In the Matter of Petition of USTelecom For Forbearance Under 47 U.S.C. § 160(c) From Enforcement Of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61, dated April 9, 2012, at pp. 13-14.

Verizon has touted this program many times. As the company boasted to the CPUC in March of last year, this program is intended to go beyond the occasional wireline customer who experiences chronic maintenance problems:

Verizon began deploying fiber to the home (FTTH) in California in 2004 and has invested billions in fiber in California since that time. This significant investment has enabled Verizon to pass well over a million homes with fiber in California. And although California has one of the highest FiOS penetrations rates in the nation, we plan to get more customers on the fiber platform by migrating thousands of additional voice customers over the next year.²¹

This development, and the increasingly aggressive tactics employed by Verizon and other ILECs to improve the economics on already-deployed fiber, adds new urgency to the Commission's review of its current copper retirement rules and policies. The same questions that CALTEL raised with the USTelecom Forbearance Petition still need to be considered: Will these "thousands" of traditional phone or DSL customers continue to have the option of returning to a copper loop (in order, for example, to be served by a competitive carrier or to return to a landline phone service that will continue to work during an extended power outage)? And at what point Verizon would consider that enough customers have been voluntarily enticed to migrate to fiber loops that a forced migration, and related copper retirement notices, will be issued for entire neighborhoods?

III. Conclusion

The Commission should grant TelePacific et al's request and revise its copper retirement rules in light of 1) new technologies and changed circumstances in the small

²¹ *Reply Declaration of Thomas Maguire for Verizon California*, California Public Utilities Commission Rulemaking R.11-12-001, *Order Instituting Rulemaking to Evaluate Telecommunications Corporations Service Quality Performance and Consider Modification to Service Quality Rules*, dated March 1, 2012 at ¶10.

and medium business market and 2) aggressive migrations of residential wireline voice customers in neighborhoods where FTTH has been deployed, creating an imminent threat of forced migration of the remaining customers and related copper retirement notices for entire neighborhoods. Failure to revisit the copper retirement rules at this time would only allow AT&T and Verizon to further consolidate their unsupervised, unregulated activities in the communications marketplace, to the detriment of competitive entry, innovation and pricing. Moreover, a failure to act would potentially leave the Commission with little ability to correct abuses before they become permanent, irretrievable network changes.

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